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CONSTITUTIONAL LAW—ENFORCEMENT LAW—APPROPRIATENESS TO CONSTITUTIONAL AMENDMENT.—The government applied for leave of court to file an information against the defendant who was charged with having liquor in his possession contrary to Title 2, Section 3 of the National Prohibition Law or Volstead Act which provides that no person shall manufacture, *etc.*, or possess any intoxicating liquor except as authorized in this Act, *etc.* *Held*, application granted. *United States v. Murphy* (D. C. 1920) 264 Fed. 842.

Irrespective of the Volstead Act being a war measure, the question arises whether that section relating to possession violates the XVIIIth Amendment which provides in part: "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to its jurisdiction thereof for beverage purposes is hereby prohibited." It is well settled that an enforcement act may go reasonably beyond the actual terms of a statute to give effect thereto in order to carry out the intention of the legislature. *State v. Centennial Brewing Co.* (Mont. 1919) 179 Pac. 296. Numerous cases have arisen under the XIVth Amendment presenting analogous problems to that in the instant case. In all these cases the legislative condemnation of practices in themselves innocent has been upheld by the courts in order to prevent the evasion of prohibitions directed against acts clearly harmful to society. Whenever the prevention of such "innocent" acts seems in fact to be necessary to effectuate the general purpose of a statute, it will be upheld as constitutional. *People ex rel. Silz v. Hesterberg* (1908) 211 U. S. 31, 29 Sup. Ct. 10; *Booth v. Illinois* (1902) 184 U. S. 425, 22 Sup. Ct. 425; *Murphy v. California* (1912) 225 U. S. 623, 32 Sup. Ct. 697. Since it would be impossible effectually to prevent the transportation of intoxicating liquors unless their possession were regulated, the provisions of the Volstead Act in this latter respect are appropriate to the enforcement of the XVIIIth Amendment.

CONSTITUTIONAL LAW—PROCLAMATION OF RATIFICATION OF AMENDMENT—MANDAMUS.—The Secretary of State of the United States, having received official notice from the requisite number of states that the Eighteenth Amendment to the Constitution of the United States had been ratified, issued a proclamation in accordance with (1818) 3 Stat. 439, U. S. Comp. Stat. (1916) § 303. Thus the amendment had become valid as a part of the constitution. The plaintiff alleging that the process of ratification in several states was not legal, maintained that the amendment had never become valid and asked for a writ of mandamus to compel the Secretary of State to revoke his proclamation. *Held*, the writ should not be granted since the Secretary of State has no authority to investigate the truth of the official notices which he receives and since the proclamation has no effect upon the validity of an amendment. *United States ex rel. Widenmair v. Colby, Secretary of State* (C. C. A. 1920) 265 Fed. 998.

Mandamus is limited to the enforcement of ministerial duties. *Wulftange v. McCollom* (1883) 83 Ky. 361; *United States ex rel. Riverside Oil Co. v. Hitchcock* (1903) 190 U. S. 316, 23 Sup. Ct. 698. Here the plaintiff neither contended nor showed that the Secretary of State was guilty of neglecting to perform such a duty. On the contrary, he averred that the duty had been performed. Nothing in (1818) 3 Stat. 439, U. S. Comp. Stat. (1916) § 303, indicates in any

way that the Secretary of State has either a privilege or a duty to delve into the question of the legality of the official notices which he receives. Mandamus has been granted for the purpose of correcting an error made by an officer in the performance of a ministerial duty. *Frederick v. Mecosta* (1889) 52 Mich. 529, 18 N. W. 343; *State ex rel. Marsh v. Whittet* (1884) 61 Wis. 351, 21 N. W. 245. However, in this case no such error was alleged to have been made. Mandamus, furthermore, will not be issued where it would be of no avail. *Lamar v. Wilkins* (1872) 28 Ark. 34; *Board of Education v. Bolton* (1899) 85 Ill. App. 92. Had the plaintiff here been granted the writ, a revocation of the proclamation could not affect the validity of the amendment, for amendments become valid when ratified by three-fourths of the legislatures of the several states. U. S. Const. Art. V. Although the decision is clearly correct, it derives its interest from the fact that it indicates the possibility of an anomalous situation. It will be noted that when the Secretary of State receives the requisite number of notices of ratification, he is obliged to issue a proclamation that the amendment "has become" valid as a part of the constitution. If he failed to do so mandamus will issue to compel him. *Wulftange v. McCollom*, *supra*. An amendment becomes valid, however, only when it is in fact ratified. If, then, a sufficient number of fraudulent notices were sent to the Department of State or if there were a sufficient number of illegal ratifications the Secretary would be compelled to issue the proclamation that the amendment had become valid although it might never become a part of the constitution. In consideration of these facts, it seems that even if the proclamation were made under the supposed circumstances, no mandamus would lie to revoke it.

CONTRACTS—ANTICIPATORY BREACH—VOLUNTARY DISABILITY.—The plaintiff, having contracted with the defendant for the purchase of goods on credit, assigned all assets and obligations to a new corporation. Thereafter the plaintiff tendered the price to the defendant who refused delivery. *Held*, one judge dissenting, that the contract was unassignable, and that the assignment of the plaintiff's entire assets was not such a voluntary disabling as would excuse the defendant from performance. *Kansas City Soap Co. v. Illinois Cudahy Packing Co.* (C. C. A., 8th Cir., 1920) 265 Fed. 108.

An anticipatory breach of a contract may take place when a promisor once puts it out of his power to perform, even though it is barely possible that he may regain ability to perform, inasmuch as in such a case the promisee acquires an irrevocable power to decline to be further bound. *Bagley v. Cohen* (1898) 121 Cal. 604, 53 Pac. 1117; *The Eliza Lines* (1905) 199 U. S. 119, 26 Sup. Ct. 8. Bankruptcy, voluntary or involuntary, is such a disability. *Central Trust Co. v. Chicago Auditorium Ass'n.* (1916) 240 U. S. 581, 36 Sup. Ct. 412. A compulsory assignment of all assets by a company has been similarly treated. *Lovell v. St. Louis Mutual Life Ins. Co.* (1883) 111 U. S. 264, 274, 4 Sup. Ct. 390. Therefore it may be argued that in the instant case, the plaintiff, by leaving itself stripped of all assets by its sweeping assignment, made itself practically insolvent and thereby disabled itself under the doctrine of *Lovell v. St. Louis Mutual Life Ins. Co.*, *supra*. In the analogous cases of fraud, a party desiring to exercise his power of rescission is held to the obligation of promptly notifying the other party of his intention. *Ripley v. Jackson Zinc, etc.*,